

¶1 Aaron Lee Almodova appeals from his convictions and sentences for aggravated driving under the influence of an intoxicant (DUI) while his license was

suspended, aggravated driving with an alcohol concentration of .08 or more while his license was suspended, aggravated driving under the influence of alcohol having committed or been convicted of two or more prior DUI offenses, and aggravated driving with an alcohol concentration of .08 or more having committed or been convicted of two or more prior DUIs. He argues the trial court erred in denying his motion to suppress evidence. Finding no error, we affirm.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to sustaining Almodova's convictions and sentences. *See State v. Haight-Gyuro*, 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). On August 15, 2008, Pima County Sheriff's Department (PCSD) Deputy Aaron Bronson stopped Almodova after seeing him drive erratically. Almodova admitted to Bronson that he had been drinking and that he knew his driver's license had been suspended. Analysis of a sample of Almodova's blood, drawn about thirty minutes after the traffic stop began, showed his alcohol concentration to be .168. A grand jury charged Almodova as described above.

¶3 Before trial, Almodova moved to suppress evidence obtained during the traffic stop, asserting Bronson did not have reasonable suspicion justifying the stop. At the suppression hearing, Bronson testified that, while following Almodova's vehicle, he saw Almodova cross the fog line "[n]umerous times," vary his speed, and exceed the speed limit. PCSD Deputy Richard Carlson, who had been driving in front of Almodova, stated that he had seen Almodova weave "from one side of the road, to the other." Carlson noted, however, that he could not tell if Almodova "went over any lines or not."

Almodova and his passenger testified Almodova had been driving normally and had not been speeding. Both admitted they had consumed several beers before getting in the car. Almodova's passenger stated that he had trouble remembering "[t]he specific details" of that night because he had "had a lot to drink."

¶4 The trial court denied Almodova's motion to suppress, concluding Bronson "had reasonable suspicion to stop [Almodova's] vehicle based on his observations that the vehicle weaved over the fog line on several occasions, exceeded the speed limit, and traveled at a varying speed." After a three-day trial, the jury found Almodova guilty as charged. The court sentenced him to mitigated, concurrent, seven-year prison terms for each offense, and this appeal followed.

Discussion

¶5 Almodova asserts the trial court erred in denying his motion to suppress evidence, a decision we review for an abuse of discretion. *State v. Szpyrka*, 220 Ariz. 59, ¶ 2, 202 P.3d 524, 526 (App. 2008). In doing so, we consider only the evidence presented at the suppression hearing, viewing that evidence in the light most favorable to upholding the court's ruling. *Id.* We review the court's ultimate legal conclusions de novo. *Id.*

¶6 The Fourth Amendment prohibits unreasonable searches or seizures. "'An investigatory stop of a motor vehicle constitutes a seizure under the Fourth Amendment.'" *State v. Livingston*, 206 Ariz. 145, ¶ 9, 75 P.3d 1103, 1105 (App. 2003), quoting *State v. Gonzalez-Gutierrez*, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996). Because investigatory detentions are "less intrusive than arrests," however, "officers need

not possess probable cause to justify them.” *Id.* ¶ 9, citing *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 881 (1975). Police need only possess a “reasonable suspicion” of criminal activity. *Id.*, citing *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). Reasonable suspicion is “‘a particularized and objective basis for suspecting the particular person stopped of criminal activity.’” *Gonzalez-Gutierrez*, 187 Ariz. at 118, 927 P.2d at 778, quoting *United States v. Cortez*, 449 U.S. 411, 417-18 (1981). A traffic stop may occur if a police officer reasonably suspects the driver of having violated a traffic law. *See Livingston*, 206 Ariz. 145, ¶ 9, 75 P.3d at 1105. The state had the burden of proving, by a preponderance of the evidence, that the stop was justified by reasonable suspicion. *See Ariz. R. Crim. P. 16.2(b)*.

¶7 Bronson testified at the suppression hearing that he saw Almodova violate at least two traffic laws. *See A.R.S. §§ 28-729(1) (lane divider), 28-701(A) (speeding)*. Almodova does not argue otherwise, instead asserting Bronson’s testimony was insufficient to sustain the state’s burden because it was “contradicted” by the testimony of Carlson, Almodova, and Almodova’s passenger. First, we note that Carlson’s testimony did not contradict Bronson’s. Although Carlson could not say whether Almodova had crossed the fog line, he did, consistent with Bronson’s testimony, state that he had seen Almodova weave back and forth. He did not testify whether Almodova had been speeding or if his speed had varied. Moreover, despite Almodova’s suggestion to the contrary, there is no requirement that other evidence corroborate a law enforcement officer’s testimony supporting a determination of reasonable suspicion. *Cf. State v. Montano*, 121 Ariz. 147, 149, 589 P.2d 21, 23 (App. 1978) (“The strength or weakness of

testimony is not measured by the number of witnesses; one witness, if relevant and credible, is sufficient to support a conviction.”).

¶8 Second, although Almodova and his passenger testified Almodova had driven normally and had not been speeding, it was the trial court’s duty to assess the credibility of the witnesses and resolve any conflicts in the evidence presented, and “we will generally defer” to the court’s findings. *State v. Lacy*, 187 Ariz. 340, 347, 929 P.2d 1288, 1295 (1996). Because the court’s determination here was supported amply by the evidence, we have no basis to disturb it. *See State v. Rosengren*, 199 Ariz. 112, ¶ 9, 14 P.3d 303, 307 (App. 2000) (“We defer to the trial court’s factual findings that are supported by the record and not clearly erroneous.”). Accordingly, we conclude the court did not abuse its discretion in denying Almodova’s motion to suppress evidence. *See Szpyrka*, 220 Ariz. 59, ¶ 2, 202 P.3d at 526.

Disposition

¶9 For the reasons stated, we affirm Almodova’s convictions and sentences.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge